



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2013-0503]

RIN 1625-AA00

Safety Zones; Captain of the Port Boston Fireworks Display
Zones, Boston Harbor, Boston, MA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish six permanent safety zones throughout Boston Inner Harbor to be enforced during fireworks displays. These six permanent safety zones would expedite public notification of a fireworks event and ensure the protection of the maritime public and event participants from the hazards associated with the fireworks display.

DATES: Comments and related material must be received by the Coast Guard on or before **[INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

Requests for public meetings must be received by the Coast Guard on or before **[INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments identified by docket number USCG-2013-0503 using any one of the following methods:

(1) Federal eRulemaking Portal:

<http://www.regulations.gov>.

(2) Fax: 202-493-2251.

(3) Mail or Delivery: Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590-0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is 202-366-9329.

See the "Public Participation and Request for Comments" portion of the SUPPLEMENTARY INFORMATION section below for further instructions on submitting comments. To avoid duplication, please use only one of these three methods.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Mr. Mark Cutter, Coast Guard Sector Boston Waterways Management Division, telephone 617-223-4000, e-mail Mark.E.Cutter@uscg.mil. If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

COTP Captain of the Port

DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking

A. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided.

1. Submitting comments

If you submit a comment, please include the docket number for this rulemaking (USCG-2013-0503), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via <http://www.regulations.gov>) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via www.regulations.gov, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we

can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, type the docket number [USCG-2013-0503] in the "SEARCH" box and click "SEARCH." Click on "Submit a Comment" on the line associated with this rulemaking.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

2. Viewing comments and documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number (USCG-2013-0503) in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the Federal Register (73 FR 3316).

4. Public meeting

We do not now plan to hold a public meeting. But you may submit a request for one using one of the four methods specified under ADDRESSES. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the Federal Register.

B. Regulatory History and Information

In previous years, the Coast Guard has established multiple temporary safety zones throughout the inner harbor on a case-by-case basis to ensure the protection of the maritime public and event participants from hazards associated with firework displays. The Coast Guard now proposes to create permanent safety zones in the inner harbor that will be enforced intermittently as fireworks events arise. The Coast Guard has taken no previous regulatory action to establish these permanent safety zones and has received no public comments or concerns

regarding the impact to waterway traffic from the past case-by-case safety zone establishment.

C. Basis and Purpose

The legal basis for the proposed rule is 33 U.S.C. 1231, 1233; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1 and 160.5; Pub. L. 107-295, 116 Stat. 2064; and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to define regulatory safety zones.

Fireworks displays are held multiple times throughout the course of the year on the navigable waters within Boston Inner Harbor. In the past, to ensure the protection of the maritime public and event participants from the hazards associated with these marine events, the Coast Guard has established a safety zone around each display in response to a request from the fireworks display organizer. Establishing individual safety zones in this case-by-case manner has proved to be administratively cumbersome.

To relieve administrative overhead and better apprise the public on designated safety locations, this proposed rule will establish safety zones that will remain in effect permanently but will be enforced only upon request of a fireworks display organizer. These permanent safety zones will be published in Title 33 of the Code of Federal Regulations.

By establishing a permanent regulation containing these designated safety zones, the Coast Guard will eliminate the need to establish a temporary final rule for each fireworks display that occurs in Boston Harbor. This will alleviate the unnecessary administrative costs and burden associated with continually establishing temporary final rules for each event year after year.

D. Discussion of Proposed Rule

For the reason discussed above, the Coast Guard proposes to establish six permanent safety zones in a new section 33 CFR 165.119. Although these six proposed safety zones will be in effect permanently, the proposed rule will only be enforced immediately before, during, and after a fireworks display. The Coast Guard anticipates that these safety zones will be enforced between the hours of 6 p.m. (e.s.t) and 1 a.m. (e.s.t), but the exact dates and times of enforcement will be published in the Federal Register via a Notice of Enforcement. The Coast Guard will also provide notice of enforcement through Local Notice to Mariners (LNM) and Broadcast Notice to Mariners (BNTM) prior to each event.

These six proposed safety zones are the Charlestown Safety Zone, the Long Wharf Safety Zone, the Fan Pier Safety Zone, the Pier 6 Safety Zone, the North Jetty Safety Zone, and the Castle Island Safety Zone. The exact coordinates and sizes of each

safety zone are listed below. The Coast Guard expects that during an enforcement period a safety zone will have a barge within the zone with a "FIRWORKS-STAY AWAY" sign on its port and starboard sides.

No vessels, except for fireworks barge and accompanying vessels, will be allowed to enter into, transit through, or anchor within a safety zone during an enforcement period without the permission of the COTP or the designated on-scene representative.

E. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes or executive orders.

1. Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

We expect the economic impact of this proposed rule to be minimal. Although this regulation may have some impact on the public, that potential impact will likely be minimal for several

reasons. First, although these proposed safety zones will be in effect permanently, each will be enforced only during a fireworks display. Based on past history, fireworks displays usually require enforcement for no more than two hours during the evening. Second, it is likely that the Coast Guard will enforce only one zone at a time. Third, vessels may enter or pass through a safety zone during an enforcement period with the permission of the Captain of the Port (COTP) or the COTP's designated on-scene representative. Finally, the Coast Guard will provide advance notification to the public anytime it intends to enforce one of these safety zones. Notification will be made through a Notice of Enforcement published in the Federal Register and also through the local Notice to Mariners, Broadcast Notice to Mariners well in advance of the event.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this

proposed rule will not have a significant economic impact on a substantial number of small entities.

This proposed rule would affect the following entities, some of which might be small entities: owners or operators of vessels intending to transit, fish, or anchor in the areas where the listed annual recurring events are being held. The proposed rule would not have a significant impact on a substantial number of small entities for all of the same reasons discussed in the REGULATORY PLANNING AND REVIEW section.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under FOR FURTHER INFORMATION CONTACT. The Coast Guard will not retaliate against small entities that question or

complain about this proposed rule or any policy or action of the Coast Guard.

4. Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520.).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their

discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This proposed rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children from Environmental Health Risks

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

11. Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This proposed rule is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action may be one of a category of actions that do not individually or cumulatively have a significant effect on the human environment.

A preliminary environmental analysis checklist supporting this determination will be available in the docket where indicated under ADDRESSES. This proposed rule involves the establishment of designated safety zones. This rule may be categorically excluded, under figure 2-1, paragraph (34)(g) of the Instruction.

We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, and Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165--REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.119 to read as follows:

§ 165.119 Safety Zones; Coast Guard Captain of the Port
Boston Fireworks Displays.

(a) *Boston Inner Harbor*. The following areas are safety zones:

(1) *Charlestown Safety Zone*: All waters of Boston inner Harbor within a 700-foot radius of the fireworks barge in approximate position 42°22'12.7" N 071°02'53" W (NAD 1983), located off of Pier 5 Charlestown Navy Yard.

(2) *Long Wharf Safety Zone*: All waters of Boston inner Harbor within a 700-foot radius of the fireworks barge in approximate position 42°21'41.2" N 071°02'36.5" W (NAD 1983), located off of Long Wharf, Boston MA.

(3) *Fan Pier Safety Zone*: All waters of Boston inner Harbor within a 700-foot radius of the fireworks barge in approximate position 42°21'23.2" N 071°02'26" W (NAD 1983), located off of the Fan Pier, South Boston, MA.

(4) *Pier 6 Safety Zone*: All waters of Boston inner Harbor within a 700-foot radius of the fireworks barge in approximate position 42°21'11.9" N 071°02'1.3" W (NAD 1983), located off of Pier 6, South Boston, MA.

(5) *North Jetty Safety Zone*: All waters of Boston inner Harbor within a 700-foot radius of the fireworks barge in approximate position 42°21'01" N 071°01'31.7" W (NAD 1983), located off of the North Jetty, South Boston, MA.

(6) *Castle Island Safety Zone*: All waters of Boston inner Harbor within a 700-foot radius of the fireworks barge in approximate position 42°20'27.4" N 071°00'28.1" W (NAD 1983), located off of the Castle Island, South Boston, MA.

(b) *Notification*. Coast Guard Sector Boston will cause notice of the enforcement of these safety zones to be made by all appropriate means to affect the widest publicity among the affected segments of the public, including Notice of Enforcement published in the Federal Register and through the local Notice to Mariners, Broadcast Notice to Mariners in advance of the event. Fireworks barges used in these locations will also have a sign on their port and starboard side labeled "FIREWORKS-STAY AWAY". This sign will consist of 10" high by 1.5" wide red lettering on a white background.

(c) *Enforcement period*. The Coast Guard anticipates that these safety zones will be enforced between the hours 6 p.m. (e.s.t.) and 1 a.m. (e.s.t.). The exact dates and times will be published as described in paragraph (b) of this section.

(d) *Definitions*. For purposes of this section "Designated on-scene representative" is any Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port Boston (COTP) to act on the COTP's behalf. The designated representative may be on an Official Patrol Vessel; Official Patrol Vessel may consist of any Coast

Guard, Coast Guard Auxiliary, State, or local law enforcement vessels assigned or approved by the COTP or the designated on-scene representative may be on shore and will communicate with vessels via VHF-FM radio or loudhailer. In addition, members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

(e) Regulations. No vessels, except for fireworks barge and accompanying vessels, will be allowed to enter into, transit through, or anchor within the safety zone during an enforcement period without the permission of the COTP or the designated on-scene representative.

(f) Compliance. All persons and vessels shall comply with the instructions of the COTP or the designated on-scene representative. Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

(g) Contact information. Vessel operators desiring to enter or operate within a safety zone during a period of enforcement shall contact the COTP or the designated on-scene representative via VHF channel 16 or 617-223-3201 (Sector Boston command Center) to obtain permission.

Dated: September 11, 2013.

J. C. O'Connor III
Captain, U.S. Coast Guard
Captain of the Port Boston

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Date: 09/26/2013]